ORDER:

Challenging the inaction of the respondents in taking appropriate action with respect to appropriate classification of the employees of Nuclear Fuel Complex, Department of Atomic Energy, ECIL, Hyderabad and to direct them to take a decision as to whether the employees of the Nuclear Fuel Complex, DAE, ECIL, Hyderabad are industrial or non-industrial and if the employees are decided as industrial, declare that the Industrial Establishment (Standing Orders) Act, 1946 as applicable, governing the services conditions of the employees of NFC and if the employees are decided as non-industrial, declare that the FRs/SRs, CCS(CCA), CCS(RSA), CCS(compound), etc. are applicable to the employees of NFC along with all the resultant benefits including but not limited to a 5 day working week, 300 day leave, etc.

It is the case of the petitioner that the employees of the first respondent-organisation are governed by industrial laws, but the management is making efforts to deny the benefits to the workmen by applying non-industrial laws; as per the options made by employees in 1973, some of the non-supervisory staff of the organization were governed by the industrial laws and some others were governed by non-industrial laws; thereafter, only industrial laws were only in currency in NFC; that as required, the standing orders of NFC was certified by the Ministry of Labour, Government of India; since the year 2002, the petitioner-union had been making representations to the authorities, but, there was no response so far; that without classifying the workmen as non-industrial, the first respondent is seeking to apply the non-industrial rules to them; the circular dated 12.05.2005 is illegal and arbitrary; hence, the Writ Petition.

The respondents filed counter affidavit denying the material

allegations, giving a brief history of the case and contended that the petitioner association has no *locus standi* to file the Writ Petition as the NFC Mazdoor Sangh, which is recognized and enjoying support from maximum workmen, has not raised any issue; the petitioner is put to strict proof of the allegations levelled in the petition; that the office Memo dated 29.07.1977 of Government of India, Ministry of Labour besides confirming certification of standing orders, also clarified that wherever Section 13-B of the Act applies, no standing orders need be certified and if the standing orders have already been certified, then the same would be invalid; the standing orders framed by the management are less favourable compelling the workmen to be at the mercy of the employers; that the NFC organization has been following FRs and SRs and other Rules and Regulations framed by the Government of India from its inception, and the Standing orders formed at the initial stages, were no longer in existence due to Section 13-B of the Act; hence, prayed to dismiss the Writ Petition.

Learned counsel for the petitioner contended that the circular issued by the respondents dated 12.05.2005 is arbitrary; that if the respondents want to adopt the Standing Orders, first of all they have to be certified by the Ministry of Labour and on earlier occasions, the respondents got certified their own Standing Orders and the competent authority has to certify the same and nothing has been done so as to bring the non-industrial rules to apply the same to the employees; with the sole purpose of defeating the interests of the workman, the impugned circular has been issued; that under Section 13(b) of the Industrial Establishment (Standing Orders) Act, 1946 (for short, 'the Act') the appropriate Government has to issue notification for applying the provisions of the C.C.S. Rules; there is no such official gazette issued by the Government; therefore, without classifying the employees as non-industrial workers, the first respondent can not apply the non-industrial rules and hence, he prays to allow the Writ Petition.

On the other hand, the learned counsel for the respondents

contended that the present Writ Petition is not maintainable in view of the fact that the petitioner association is not recognised by the respondents; the impugned proceedings relate to service conditions of the employees; therefore, the remedy for the petitioner is otherwise; in view of the change in the service conditions, the petitioner-association has to plead and establish in what manner their conditions would be changed and some of the employees filed an application before the Tribunal in the year 1999; therefore, the petitioners can not have any right to challenge the same when the disputed questions of fact arise in this Writ Petition; therefore, he prays to dismiss the Writ Petition.

The petitioner mainly challenged the circular issued by the respondents dated 12.05.2005. As per this circular, it is stated that the Act do not apply for the personnel working in N.F.C. by virtue of 13-B of the Act.

Section 13-B of the Act reads as follows:

> "Nothing in this Act shall apply to an Industrial Establishment insofar as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services(Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in Official Gazette, apply."

The Circular also made it clear that from the beginning, the first respondent is following the Fundamental Rules/ Supplementary Rules, CCS(Conduct) Rules, 1964, CCS(CCA) Rules, 1965 and other CCS Rules and Regulations. It is also specifically stated in the counter affidavit filed by the respondents that in respect of all employees including the workmen, Fundamental Rules, SRs and other CCS Rules and regulations are being applied right from its

inception. Therefore, Section 13-B of the Act has no application. However, a clarification was sought from the Ministry of Labour, who clarified by its order dated 29.07.1997 stating that the Standing Orders are applicable only to those workers to whom the provisions of FRs, SRs, CCS(CCA) Rules, CCS(TS) Rules, etc. are not applicable. It is also made clear in the order that whenever Section 13-B of the Act applies, no Standing Orders need be certified and if the Standing Orders have already been certified, then the same would be invalid. The Ministry of Labour, vide its letters dated 29.07.1977 and 10.08.1979 clarified that the provisions of CCS(CCA) Rules are applicable to the employees of Nuclear Fuel Complex. When a meeting was held in October, 1984 with the employees association with regard to the exemption from the Standing Orders, it was made clear to them that the employees were governed by FRs, SRs and other Rules framed by the Central Government besides leave rules. Therefore, the draft Standing Orders stipulating the service conditions of the workmen employed in respondents' organization which were in initial stages, have not been acted upon in view of Section 13-B of the Act. Therefore, applying the non-industrial rules is not the decision taken for the first time by the proceedings dated 12.05.2005, but from the inception of the institute, the non-industrial rules such as CCS(CCA) Rules, CCS (Leave) Rules, Temporary Service Rules, CCS (Conduct) Rules are being applied to the employees of the respondents. Unless the standing orders are certified, question of application to the employees would not arise. The section is also clear that when the standing orders are applicable to those workers to whom the provisions of the aforesaid rules are not applicable.

The specific case of the respondents is that the technical and scientific personnel were broadly classified as Tradesmen (workmen), Scientific Assistants (Supervisory Staff) and Scientific Officers. All the non-industrial rules were being made applicable uniformly to all the employees. Therefore, question of taking a decision by the respondents whether the employees of the

respondents are industrial or non-industrial does not arise. Further more, it is categorically stated in the counter that there were different kinds of employees on the rolls of the respondents and that the service conditions of work charged employees have to be formulated, and so, the question of extension of industrial pattern of service conditions to all workmen in NFC was discussed with NFC Employees' Association and a settlement was arrived at in the year 1973, according to which all the employees were given an option with regard to their service conditions. Therefore, the petitioner-association which was formed on behalf of the minority members, can not turn round and say that they are governed by the provisions of Industrial Standing Orders. Though he petitioner association is a registered association as early as in the year 1994, but at the same time, it is a minority workers' union and admittedly, the said trade union is not recognized by the respondents. There is no indication in the affidavit with regard to the total number of members of the petitioner-association. On the other hand, the respondents have categorically stated that NFC Mazdoor Sangh, which has been recognized by the department under CCS (RSA) Rules, 1993 and which has been enjoying support from maximum workmen, never raised any issue. Therefore, the majority union is not before this Court. If any order is passed behind back of the majority union members, it would affect their service conditions. The majority mazdoor sangh is not added as a party to this Writ Petition. The Standing Orders as framed by the management are less favourable compelling the workmen to be at the mercy of the employers. Admittedly, the petitioner-association has not applied for recognition under RSA Rules. Since all the non-industrial rules are being followed by the institution, question of changing them whether detrimental or not to the interest of the majority members of the workers, the directions as sought for can not be granted.

Some members of petitioner-association raised an issue before the

Central Administrative Tribunal stating that they are entitled for grant of leave in accordance with the provisions contained in the Central Civil Services (Leave) Rules, 1972 and all other consequential benefits. The Tribunal, vide its orders dated 06.03.1989 dismissed the said petition. About 1000 employees of the respondent Nuclear Fuel Complex filed a Writ Petition before this Court contending that they are entitled to be governed by the CCS (Leave) Rules, 1965, but the same was transferred to the Central Administrative Tribunal, which was taken up on file as Transferred Application No.137 of 1987 by the Tribunal. The Tribunal dismissed the said application rejecting the case of the petitioners therein. The dispute before the Tribunal was applying two sets of Rules to the employees who were recruited prior to 1973 and the employees who were recruited after 1973. The said clarification was upheld by the Tribunal. Therefore, the prayer in this Writ Petition can not be granted, firstly in view of the fact that the petitioner-association is not recognized by the management and secondly, it is not a majority union of the respondent and the majority union is not a party to this Writ Petition, and that by virtue of the proceedings, if any of the service conditions of the employees are being affected, the remedy is elsewhere.

The Nuclear Fuel Complex employees' association filed a Writ Petition before this Court in W.P. No. 16768 of 2005 to declare the action of the respondents in effecting recovery of annual subscriptions from pay roll in favour of NFC Mazdoor, when the workmen submitted their withdrawals in favour of the association, as contrary to CCS (Recognition of Service) Rules, 1993. This Writ Petition was dismissed by this Court holding that, "… The employees, who were aggrieved against non-passing of any orders on withdrawing their membership from the fourth respondent, which is a recognized union, are expected to seek appropriate remedy."

In the light of the foregoing discussion, no relief can be granted to the petitioner-association. The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

09.09.2005

DRK

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 13327 of 2005

Date: 09.09.2005

Between:

NFC Employees' Trade Union Congress,
Rep. by its Secretary A.Sudershan, Nuclear
Fuel Complex, Govt. of India,
Department of Atomic Energy,
ECIL (po), Hyderabad

…Petitioner

and

1)Nuclear Fuel Complex, rep. by its
Chief Executive, ECIL post, Hyderabad-500 062.
& 3 others

…Respondents